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19 Attorneys for Plaintiff
20 JOHN CAMPBELL
21

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
24

25 JOHN EARL CAMPBELL,
26
27 Plaintiff,

28 v.

29 NATIONAL RAILROAD PASSENGER
30 CORPORATION dba AMTRAK, JOE DEELY
31 and DOES 1 through 15 inclusive,
32
33 Defendants.
34

Case No. C05-05434 MJJ

**STIPULATED CONFIDENTIALITY
AND PROTECTIVE ORDER**

35 The PARTIES, by and through their respective counsel, hereby stipulate to the terms
36 contained in the attached protective order in the matter of Howard v. National Railroad Passenger
37 Corporation, et al., which is Exhibit A hereto, which shall apply in fully force and effect to this
38 litigation, with the proviso that documents produced in one or the other case shall not be deemed

1 produced in the other. Documents must separately be produced in the case to which the
2 documents pertain.

3 Respectfully submitted,

4 Dated: ~~July~~ **16**, 2007

NOVEMBER

PRICE AND ASSOCIATES

6 By: 

7 PAMELA Y. PRICE
8 Attorneys for Plaintiff
9 JOHN EARL CAMPBELL

10 Date: July 6, 2007

JACKSON LEWIS LLP

13 By: /s/

14 KATHLEEN MAYLIN
15 CARA CHING-SENAHA
16 Attorneys for Defendants
17 NATIONAL RAILROAD PASSENGER
18 CORPORATION dba AMTRAK and JOE
19 DEELY

20 **ORDER**

21 Pursuant to the foregoing Stipulation of the parties, and good cause appearing therefore,
22 IT IS SO ORDERED.

23 Dated: _____

24 HON. MARTIN J. JENKINS
25 UNITED STATES DISTRICT COURT
26
27
28

CERTIFICATE OF SERVICE

CASE: *John Earl Campbell v. National Railroad Passenger Corporation*
CASE NO.: USDC-NDCA C 05-05434 MJJ

I, Cheryl K. Baltru, declare that I am employed with the law firm of Jackson, Lewis, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On November 29, 2007, I served the attached **STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER** in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Pamela Y. Price, Esq.
Price and Associates
1611 Telegraph Avenue, Suite 1450
Oakland, CA 94612

Telephone: (510) 452-0292
Fax: (510) 452-5625

- ☒ **BY MAIL:** United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.
- ☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above address.
- ☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above address within 24 hours by overnight delivery service.
- ☐ **BY FACSIMILE:** I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 29, 2007, at San Francisco, California.


Cheryl K. Baltru

EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MOYSE HOWARD, JR.

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION dba AMTRAK, STEVE
SHELTON, PATSY HALL, JOE DEELY and DOES
1-15, inclusive,

Case No. C-05-04069 SI

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Trial: May 29, 2007

1 The parties to this action, through their respective attorneys of record, stipulate and agree
2 as follows:

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production of
5 confidential, proprietary, or private information for which special protection from public
6 disclosure and from use any purpose other than prosecuting this litigation would be warranted.
7 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
8 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
9 all disclosures or responses to discovery and that the protection it affords extends only to the
10 limited information or items that are entitled under the applicable legal principles to treatment as
11 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
12 Stipulated Protective Order creates entitlement to file confidential information under seal; Civil
13 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that
14 will be applied when a party seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and outside counsel (and their support staff).

18 2.2 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner generated, stored, or maintained (including, among other things, testimony,
20 transcripts, or tangible things) that are produced or generated in disclosures or responses to
21 discovery in this matter.

22 2.3 "Confidential" Information or Items: information (regardless of how generated,
23 stored or maintained) or tangible things that qualify for protection under standards developed
24 under F.R.Civ.P. 26(c).

25 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely
26 sensitive "Confidential Information or Items" whose disclosure to another Party or nonparty
27 would create a substantial risk of serious injury that could not be avoided by less restrictive
28 means.

1 2.5 Receiving Party: a party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 2.6 Producing Party: a party or non-party that produces Disclosure or Discovery
4 Material in this action.

5 2.7 Designating Party: a party or non-party that designates information or items that it
6 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential —
7 Attorneys' Eyes Only."

8 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
9 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

10 2.9 Outside Counsel: attorneys who are not employees of a party but who are retained
11 to represent or advise a Party in this action.

12 2.10 House Counsel: attorneys who are employees of a Party.

13 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
14 support staff).

15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only Protected Material
17 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
18 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
19 parties or counsel to or in court or in other settings that might reveal Protected Material.

20 4. DURATION

21 Even after the termination of this litigation, the confidentiality obligations imposed by this
22 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
23 otherwise directs.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
26 or non-party that designates information or items for protection under this Order must take care to
27 limit any such designation to specific material that qualifies under the appropriate standards. A
28 Designating Party must take care to designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify – so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not
3 swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
6 unnecessarily encumber or retard the case development process, or to impose unnecessary
7 expenses and burdens on other parties), expose the Designating Party to sanctions. If it comes to
8 a Party's or a non-party's attention that information or items that it designated for protection do
9 not qualify for protection at all, or do not qualify for the level of protection initially asserted, that
10 Party or non-party must promptly notify all other parties that it is withdrawing the mistaken
11 designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
13 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
14 material that qualifies for protection under this Order must be clearly so designated before the
15 material is disclosed or produced. Designation in conformity with this Order requires:

16 (a) for information in documentary form (apart from transcripts of depositions or other
17 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that
19 contains protected material. If only a portion or portions of the material on a page qualifies for
20 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
21 appropriate markings in the margins) and must specify, for each portion, the level of protection
22 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY"). A Party or non-party that makes original documents or materials available for
24 inspection need not designate them for protection until after the inspecting Party has indicated
25 which material it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine which documents,

1 or portions thereof, qualify for protection under this Order, then, before producing the specified
2 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
3 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that
4 contains Protected Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins) and must specify, for each portion, the level of protection
7 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
8 EYES ONLY");

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party
10 or non-party offering or sponsoring the testimony identify on the record, before the close of the
11 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
12 of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."
13 When it is impractical to identify separately each portion of testimony that is entitled to
14 protection, and when it appears that substantial portions of the testimony may qualify for
15 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
16 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify
17 the specific portions of the testimony as to which protection is sought and to specify the level of
18 protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
19 EYES ONLY").

20 Only those portions of the testimony that are appropriately designated for protection
21 within the 20 days shall be covered by the provisions of this Stipulated Protective Order.
22 Transcript pages containing Protected Material must be separately bound by the court reporter,
23 who must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or nonparty
25 offering or sponsoring the witness or presenting the testimony; and,

26 (c) for information produced in some form other than documentary, and for any other
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
28 or containers in which the information or item is stored the legend "CONFIDENTIAL" or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the
2 information or item warrant protection, the Producing Party, to the extent practicable, shall
3 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly
4 Confidential – Attorneys’ Eyes Only.”

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
7 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
8 under this Order for such material. If material is appropriately designated as “Confidential” or
9 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the
10 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
11 that the material is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Meet and Confer. A Party that elects to initiate a challenge to a Designating
14 Party’s confidentiality designation must do so in good faith and must begin the process by
15 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
16 with counsel for the Designating Party. In conferring, the challenging Party must explain the
17 basis for its belief that the confidentiality designation was not proper and must give the
18 Designating Party an opportunity to review the designated material, to reconsider the
19 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
20 designation. A challenging Party may proceed to the next stage of the challenge process only if it
21 has engaged in this meet and confer process first.

22 6.2 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
23 designation after considering the justification offered by the Designating Party may file and serve
24 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
25 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
26 such motion must be accompanied by a competent declaration that affirms that the moving party
27 has complied with the meet and confer requirements imposed in the preceding paragraph and that
28 sets forth with specificity the justification for the confidentiality designation that was given by the

1 Designating Party in the meet and confer dialogue. The burden of persuasion in any such
2 challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all
3 parties shall continue to afford the material in question the level of protection to which it is
4 entitled under the Producing Party's designation.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a non-party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
9 the categories of persons and under the conditions described in this Order. When the litigation has
10 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
11 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a secure manner that ensures that access is limited to the persons authorized under
13 this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
15 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated CONFIDENTIAL only to:

17 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of
18 said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
19 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as
20 Exhibit A;

21 (b) the officers, directors, and employees (including House Counsel) of the Receiving
22 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
23 "Agreement to Be Bound by Protective Order" (Exhibit A);

24 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
25 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
26 Protective Order" (Exhibit A);

27 (d) the Court and its personnel;

28 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably

1 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
2 Order" (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
4 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).
5 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
6 must be separately bound by the court reporter and may not be disclosed to anyone except as
7 permitted under this Stipulated Protective Order; and,

8 (g) the author of the document or the original source of the information.

9 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
10 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
11 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
12 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

13 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of
14 said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
15 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as
16 Exhibit A;

17 (b) House Counsel of a Receiving Party to whom disclosure is reasonably necessary for
18 this litigation, and who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

19 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for
20 this litigation, and (2) who have signed the "Agreement to Be Bound by Protective Order"
21 (Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
24 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
25 Order" (Exhibit A); and,

26 (f) the author of the document or the original source of the information.

27 ///

28 ///

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Receiving Party is served with a subpoena or an order issued in other litigation that
4 would compel disclosure of any information or items designated in this action as
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
7 and in no event more than three court days after receiving the subpoena or order. Such
8 notification must include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the Party who caused the
10 subpoena or order to issue in the other litigation that some or all the material covered by the
11 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
12 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
13 caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the existence of
15 this Protective Order and to afford the Designating Party in this case an opportunity to try to
16 protect its confidentiality interests in the court from which the subpoena or order issued. The
17 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
18 confidential material – and nothing in these provisions should be construed as authorizing or
19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Stipulated Protective
23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
25 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
26 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
27 Be Bound" that is attached hereto as Exhibit A.

28 ///

10. FILING PROTECTED MATERIAL Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered

1 by this Protective Order.

2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3 Date: April 4, 2007

JACKSON LEWIS LLP

5 By: /s/ Janine R. Hudson

6 Michael J. Christian

7 Scott W. Osborne

8 Janine R. Hudson

9 Attorneys for Defendant

NATIONAL RAILROAD PASSENGER

CORPORATION ("AMTRAK"), STEVE

SHELTON, PATSY HALL AND JOE DEELY

10 Dated: April 4, 2007

PRICE AND ASSOCIATES

12 By: /s/

13 Pamela Y. Price

14 Attorneys for Plaintiff

MOYSE HOWARD

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 Dated: _____, 2007



HONORABLE SUSAN ILLSTON

UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the Northern District of
California on [] in the case of _____
_____. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern
District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Vega, Belinda (S.F.)

From: ECFHELPDESK@cand.uscourts.gov
Sent: Thursday, April 05, 2007 2:32 PM
To: efilng@cand.uscourts.gov
Subject: Activity in Case 3:05-cv-04069-SI Howard v. National Railroad Passenger Corporation et al
"Protective Order"

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Case Name: Howard v. National Railroad Passenger Corporation et al

Case Number: 3:05-cv-4069

Filer:

Document Number: 97

Docket Text:

PROTECTIVE ORDER. Signed by Judge Illston on 4/5/07. (ts, COURT STAFF) (Filed on 4/5/2007)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:T:\Howard.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=4/5/2007] [FileNumber=3351593-0] [99b1265f8b28393575785df8890eff0cce39a8c27e923788f8bd06fe860574eb108fd1baad8c5e04367e4b068f7c24241c699c7abcd2bd9252b6fa7d3219fe44]]

4/5/2007

3:05-cv-4069 Notice will be electronically mailed to:

Erika M. Barbara embarbara@hotmail.com

Janine R. Hudson hudsonj@jacksonlewis.com, vegab@jacksonlewis.com

Scott W. Osborne obornes@jacksonlewis.com, meadej@jacksonlewis.com

Pamela Y. Price pypesq@aol.com

Ok-Hee Shim pypesq@aol.com

3:05-cv-4069 Notice will be delivered by other means to:

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Weil Gotshal & Manges LLP
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Redwood Shores, CA 94065-1175

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Oakland, CA 94610

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